

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MEDIACOM SOUTHEAST LLC)	
)	CSR 6909-E, 6910-E
)	
Petition for Determination of Effective)	
Competition in various Kentucky Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2007

Released: July 20, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Southeast LLC ("Mediacom") has filed a petition with the Commission pursuant to Section 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that its cable systems serving various Kentucky franchise areas are subject to effective competition pursuant to Section 623(l) of the Communications Act of 1934, as amended ("Communications Act"),¹ and the Commission's implementing rules,² and are therefore exempt from cable rate regulation in those communities. No opposition to the petition was filed. Finding that Mediacom is subject to effective competition in the listed Communities, we grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Local Exchange Carrier Effective Competition

3. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a local exchange carrier (“LEC”) or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁶

4. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.⁷ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.⁸

5. Mediacom claims the presence of effective competition with respect to its cable system serving Munfordville (KY0188) and Edmonton, Kentucky (KY0184) (the “Franchise Areas”) due to the presence of South Central Rural Telephone Cooperative Corporation, Inc. (“SCRTC”). Mediacom asserts that SCRTC is a local exchange carrier that provides local exchange access services in the Franchise Areas. Mediacom operates a cable television system in the Franchise Areas for which it seeks a determination of effective competition and, having been assigned Community Unit Identification (CUID) numbers, qualifies as the incumbent cable operator within the Franchise Areas for purposes of the LEC effective competition test. Mediacom provided information showing that the State of Kentucky has granted a certificate for the provision of telephone exchange and local exchange access service to SCRTC.⁹ Therefore, SCRTC qualifies as a LEC for purposes of the LEC effective competition test.¹⁰

6. SCRTC received a local cable franchise from Munfordville in 2001 and from Edmonton in 2002, authorizing it to provide cable programming services in these Franchise Areas.¹¹ Mediacom demonstrated that the Franchise Areas are essentially the same as that of its own. SCRTC’s cable plant covers most of the Franchise Areas and its cable plant substantially overlaps Mediacom’s service area.¹² In addition to holding franchises for the provision of cable service within the Franchise Areas, SCRTC

⁶ 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the “LEC” effective competition test.

⁷ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“Cable Reform Order”).

⁸ *Id.*

⁹ Petition at 3 & Exhibit C.

¹⁰ *See* 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

¹¹ Petition at 4 & Exhibit F.

¹² Petition at 4.

has distributed press releases, marketing materials, and engaged in local advertising within the Franchise Areas so that potential cable subscribers in the Franchise Areas are reasonably aware of the availability of its cable service and need only contact SCRTC to obtain service.¹³

7. The SCRTC marketing materials show that its cable system offers over 80 channels of video programming that includes non-broadcast programming services such as MSNBC, CNN, and ESPN, as well as a complement of several local television broadcast stations.¹⁴ Based on this record, we find that SCRTC's complement of programming services compares with the programming available on Mediacom's system¹⁵ and is sufficient to satisfy this aspect of the LEC effective competition test.¹⁶ Mediacom also provided evidence that there are no regulatory, technical, or other impediments to SCRTC's provision of service within the Franchise Areas, and that SCRTC is able to provide cable service that substantially overlaps Mediacom's service.¹⁷ Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable system serving the Munfordville and Edmonton Franchise Areas is subject to LEC effective competition.

B. Low Penetration Effective Competition

8. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹⁸ Mediacom provided information showing that less than 30 percent of the households within the franchise areas subscribe to its cable services in Hart and Metcalfe, Kentucky.¹⁹ Accordingly, we conclude that Mediacom has demonstrated the existence of low penetration effective competition under our rules.

¹³ *Id.* at 5-6 & Exhibit E.

¹⁴ *Id.* at 6 & Exhibit G.

¹⁵ *Id.* at 6 & Exhibit H.

¹⁶ *See* 47 C.F.R. § 76.905(g).

¹⁷ Petition at 4 & Exhibit C.

¹⁸ 47 U.S.C § 543(l)(1)(A).

¹⁹ The precise Mediacom penetration rates are set forth in Attachment A.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition filed by Mediacom Southeast LLC for a determination of effective competition in Hart and Metcalfe, Kentucky **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the petition filed by Mediacom Southeast LLC for determination of effective competition in Munfordville and Edmonton, Kentucky **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Mediacom Minnesota LLC **ARE REVOKED**.

12. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

²⁰ 47 C.F.R. § 0.283.

Attachment A

Cable Operator Subject to Low Penetration Effective Competition**MEDIACOM SOUTHEAST, LLC: CSR 6909-E, 6910-E**

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
Hart	KY0894	6,769	505	7.46%
Metcalfe	KY0844	4,016	154	3.83%